

## Department of State

## § 40.102

service in the United States Armed Forces.

(b) *Applicability to nonimmigrants.* INA 212(a)(8)(B) applies to nonimmigrant visa applicants who have departed from or remained outside the United States between September 8, 1939 and September 24, 1978 to avoid or evade training or service in the U.S. Armed Forces except an alien who held nonimmigrant status at the time of such departure.

§§ 40.83–40.89 [Reserved]

### Subpart J—Aliens Previously Removed

SOURCE: 61 FR 59184, Nov. 21, 1996, unless otherwise noted.

#### § 40.91 Certain aliens previously removed.

(a) *5-year bar.* An alien who has been found inadmissible, whether as a result of a summary determination of inadmissibility at the port of entry under INA 235(b)(1) or of a finding of inadmissibility resulting from proceedings under INA 240 initiated upon the alien's arrival in the United States, shall be ineligible for a visa under INA 212(a)(9)(A)(i) for 5 years following such alien's first removal from the United States.

(b) *10-year bar.* An alien who has otherwise been removed from the United States under any provision of law, or who departed while an order of removal was in effect, is ineligible for a visa under INA 212(a)(9)(A)(ii) for 10 years following such removal or departure from the United States.

(c) *20-year bar.* An alien who has been removed from the United States two or more times shall be ineligible for a visa under INA 212(a)(9)(A)(i) or INA 212(a)(9)(A)(ii), as appropriate, for 20 years following the most recent such removal or departure.

(d) *Permanent bar.* If an alien who has been removed has also been convicted of an aggravated felony, the alien is permanently ineligible for a visa under INA 212(a)(9)(A)(i) or 212(a)(9)(A)(ii), as appropriate.

(e) *Exceptions.* An alien shall not be ineligible for a visa under INA 212(a)(9)(A)(i) or (ii) if the Attorney

General has consented to the alien's application for admission.

[62 FR 67568, Dec. 29, 1997, as amended at 63 FR 64628, Nov. 23, 1998]

#### § 40.92 Aliens unlawfully present.

(a) *3-year bar.* An alien described in INA 212(a)(9)(B)(i)(I) shall be ineligible for a visa for 3 years following departure from the United States.

(b) *10-year bar.* An alien described in INA 212(a)(9)(B)(i)(II) shall be ineligible for a visa for 10 years following departure from the United States.

(c) *Waiver.* If a visa applicant is inadmissible under paragraph (a) or (b) of this section but appears to the consular officer to meet the prerequisites for seeking the benefits of INA 212(a)(9)(B)(v), the alien shall be informed of the procedure for applying to INS for relief under that provision of law.

[62 FR 67568, Dec. 29, 1997]

#### § 40.93 Aliens unlawfully present after previous immigration violation.

An alien described in INA 212(a)(9)(C)(i) is permanently ineligible for a visa unless the Attorney General consents to the alien's application for readmission not less than 10 years following the alien's last departure from the United States. Such application for readmission shall be made prior to the alien's reembarkation at a place outside the United States.

[62 FR 67568, Dec. 29, 1997]

§§ 40.94–40.99 [Reserved]

### Subpart K—Miscellaneous

SOURCE: 56 FR 30422, July 2, 1991, unless otherwise noted. Redesignated at 61 FR 59184, Nov. 21, 1996.

#### § 40.101 Practicing polygamists.

An immigrant alien shall be ineligible under INA 212(a)(9)(A) only if the alien is coming to the United States to practice polygamy.

#### § 40.102 Guardian required to accompany excluded alien.

INA 212(a)(9)(B) is not applicable at the time of visa application.